

1 KEKER & VAN NEST, LLP
2 JEFFREY R. CHANIN - #103649
3 DARALYN J. DURIE - #169825
4 ASHOK RAMANI - #200020
5 710 Sansome Street
6 San Francisco, CA 94111-1704
7 Telephone: (415) 391-5400
8 Facsimile: (415) 397-7188
9 Email: jrc@kvn.com
10 djd@kvn.com
11 axr@kvn.com

7 Attorneys for Plaintiff and Counterclaim-defendant,
NETFLIX, INC.

VINSON & ELKINS LLP
MICHAEL L. RAIFF
3700 Trammell Crow Center
2001 Ross Avenue
Dallas, TX 75201-2974
Telephone: (214) 220-7700
Facsimile: (214) 220-7716
mraiff@velaw.com

13 Attorneys for Defendant and Counterclaim-plaintiff
14 BLOCKBUSTER, INC and Non-Party,
BAKER BOTTS, LLP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NETFLIX, INC., a Delaware corporation,

Case No. C 06 2361 WHA (JCS)

Plaintiff,

21 | BLOCKBUSTER, INC., a Delaware
22 | corporation. DOES 1-50.

**STIPULATION AND [PROPOSED]
ORDER REGARDING DEPOSITION OF
BAKER BOTTS, LLP**

Complaint filed: April 4, 2006

Defendant.

AND RELATED COUNTERCLAIMS

1 WHEREAS, on or around April 5, 2007 Plaintiff and Counterclaim-Defendant Netflix,
2 Inc. (“Netflix”) served a subpoena demanding testimony and documents upon non-party Baker
3 Botts, LLP, with the deposition to take place in Dallas on April 24, 2007;

4 WHEREAS, the documents and testimony requested of Baker Botts, LLP touch upon
5 issues that relate to Defendant and Counterclaim-Plaintiff Blockbuster, Inc. (“Blockbuster”)’s
6 decision to rely upon the advice of counsel in this case;

7 WHEREAS, the parties have reached an agreed-upon briefing schedule on issues relating
8 to Blockbuster’s reliance on the advice of counsel in which opening briefs are due to be filed on
9 May 4, opposition briefs are to be filed on May 18, and reply briefs are to be filed on May 25,
10 with a hearing set before the Honorable Joseph C. Spero on June 8;

11 WHEREAS, counsel for Baker Botts has indicated that the witness who is most
12 knowledgeable about the matters on which Netflix seeks testimony is unavailable the week of
13 April 23, but is willing and able to sit for a deposition on Wednesday, May 2 in Dallas, which
14 date comes after the cutoff set for fact discovery in this case but prior to the date upon which
15 briefs relating to the issue of Blockbuster’s decision to rely on the advice of counsel are to be
16 filed;

17 NOW, THEREFORE, Netflix, Blockbuster, and Baker Botts, LLP respectfully request
18 that the deposition of Baker Botts, LLP be permitted to be taken on Wednesday, May 2.

19

20

21

22

23

24

25

26

27

28

1 [PROPOSED] ORDER
2

3 After reviewing the foregoing stipulation, and good cause appearing, it is ordered that the
4 deposition of Baker Botts, LLP in this matter may be taken on May 2, 2007.
5

6 Dated: April 25, 2007

Respectfully submitted,

KEKER & VAN NEST, LLP

7
8 By: /s/ Eugene M. Paige
9 Eugene M. Paige
10 Attorneys For Plaintiff and Counterclaim
Defendant NETFLIX, INC.

11 Dated: April 25, 2007

Respectfully submitted,

12 VINSON & ELKINS LLP

13
14 By: /s/ Michael L. Raiff
15 Michael L. Raiff
16 Attorneys For Defendant and Counterclaim
Plaintiff BLOCKBUSTER INC. and
Non-party BAKER BOTTS, LLP

17 I hereby attest, pursuant to section X of General Order 45, that concurrence in the filing
18 of this document has been obtained from Michael L. Raiff, Esq., Attorney for Defendant and
19 Counterclaim Plaintiff Blockbuster Inc. and Non-party Baker Botts, LLP.
20

21 Dated: April 25, 2007

By: /s/ Eugene M. Paige

22 Pursuant to stipulation, IT IS SO ORDERED.

23 Dated:

24
25 By: _____
26 THE HON. WILLIAM H. ALSUP
27 UNITED STATES DISTRICT JUDGE
28